

LOST POLLACK MINING AND EXPLORATION, LTD.

IBLA 80-834

Decided September 30, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. 3833 (AZ).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

APPEARANCES: Robert R. Brambley, agent for Lost Pollack Mining and Exploration, Ltd.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated July 7, 1980, by the Arizona State Office, Bureau of Land Management (BLM), declaring 16 mining claims located in Mohave County, Arizona, 1/ abandoned and void because appellant had failed to comply with recordation requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations 43 CFR Subpart 3833.

[1, 2] Eight of appellant's claims were located prior to October 21, 1976, one in 1978, and seven in 1979. BLM received copies of the certificates of location for all the claims on April 11, 1980, and returned them to appellant on the ground that they were not timely filed pursuant to FLPMA, supra, and the applicable regulation, 43 CFR 3833.1-2, which provides in part:

1/ The claims and their dates of location are:

<u>Claim Name</u>	<u>Date of Location</u>
Lucky Eight #1	March 1, 1976
Lucky Eight #2	March 1, 1976
Lucky Eight #3	March 1, 1976
Lucky Eight #4	March 1, 1976
Lucky Eight #5	March 1, 1976
Lucky Eight #6	March 1, 1976
Lucky Eight #7	March 1, 1976
Lucky Eight #8	March 1, 1976
Iroquois #1	August 1, 1979
Iroquois #2	August 1, 1979
Iroquois #3	August 1, 1979
Iroquois #4	August 1, 1979
Iroquois #5	August 1, 1979
Iroquois #6	August 1, 1979
Iroquois #7	April 1, 1978
Iroquois #8	August 1, 1979

## [§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. \* \* \*

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

The above regulations, implementing section 314(b) of FLPMA, 43 U.S.C. § 1744 (1976), are mandatory and must be complied with. Nila Tyrrel, 49 IBLA 267 (1980); John Walter Chaney, 46 IBLA 229 (1980). For the eight claims located before October 21, 1976, appellant had until and including October 22, 1979, to record the location certificates with BLM. For the Iroquois claims located between April 1, 1978, and August 1, 1979, the certificates of location had to be recorded with BLM within 90 days of their respective dates of location, which appellant did not do. Failure to timely file the required certificates is deemed conclusively to constitute an abandonment of the claims by the owner and renders them void. Nila Tyrrel, *supra*; James E. Cooper, 48 IBLA 175 (1980).

[3] 43 CFR 3833.4 provides that failure to file any instrument required by sections 3833.1-2(a), (b), and 3833.2-1 within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

Responding on appeal for appellant, Robert R. Brambley states:

1. All claims as filed on January 14, 1980 [2/], as amended, were filed as new claims as of that date, and location dates on claim forms was date of original location.
2. As there is no adverse parties [sic] involved in these claims, and continuity is not at issue, I will concede to January 14, 1980 as being the location date on all claims.

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2/ There is nothing in the record to warrant finding that the mining claims in issue were relocated as of January 14, 1980.

The statute, FLPMA, does not give the Board authority to waive the application of, or the effect of, a claimant's failure to meet the requirements of its implementing regulations, nor do we know of any other source of such authority.

The Lucky Eight and Iroquois mining claims must be deemed conclusively to have been abandoned and to be void because the requirements of the statute and regulations were not met. However, assuming the land is open to mining location, appellant may relocate the claims for locatable minerals, subject to intervening rights of the third parties, and the filing of all required notices of such relocation as required by the Act, supra, and 43 CFR 3833.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

